IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08-08-2019
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THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.23293 of 2019
And
W.M.P.Nos.23023 and 23025 of 2019

M/s/Supreme Dyechem Pvt Ltd.,
Represented by its Director, Mr.Mohan
Prasath J, Having its Registered Office at
T-40, Rudraksh Complex-II,
Opp. Annapurna Restaurant,
Nr.Jashodanagar Cross Roads,
Vatva 382 445,
Ahmedabad,
Gujarat

.. Petitioner

vs.

1.Assistant Commissioner (CT)(FAC),
Cuddalore Town Assessment Circle,
Cuddalore.

2.The Branch Manager,
ICICI Bank Limited,
Poonam Plaza,
Ground Floor,
Rambaug Plaza,
Mani Nagar,
Ahmedabad - 380 008,
Gujarat.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned notice dated 23.7.2019 issued by the first respondent in Rc A3/102/2019 dated 22.7.2019 and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent-1 : Mr.V.Haribabu,
Additional Government Pleader.

O R D E R

Mr.Hari Radhakrishnan, learned counsel on record for writ petitioner and Mr.V.Haribabu, learned Additional Government Pleader, who has accepted notice on behalf of first respondent, are before this Court.

2. To be noted, second respondent is the Branch Manager of a Bank, in which the writ petitioner Company has an account, which has been attached. Therefore, the second respondent is only a formal party and is in the nature of a Garnishee.

3. Be that as it may, with consent of both sides, the main writ petition itself is taken up, heard out and is being disposed of.

4. Both the learned counsel submit without any disputation and disagreement that subject matter of instant writ petition arises under 'The Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall be hereinafter be referred to as 'TNVAT Act' for brevity.

5. The writ petitioner is a Private Limited Company and it is therefore a juristic person. One of the Directors of the writ petitioner Company, namely, G.Jayabal, started doing business under the name and style of 'Supreme Chemical Industries' as sole proprietor.

6. Suffice to say that G.Jayabal was a dealer within the meaning of TNVAT Act, that there were proceedings qua G.Jayabal under TNVAT Act and that the same culminated in an order bearing Ref. No.TIN:33784384596/14-15 signed on 15.2.2017 (hereinafter 'said proceedings' for brevity). Said proceedings are revised assessment proceedings under Section 27(1) of TNVAT Act. The tax liability under said proceedings has been paid and there is no dispute about this. Penalty of Rs.11,05,037/- (Rupees Eleven Lakhs Five Thousand and Thirtyseven only) was also imposed under Section 27(4) of TNVAT Act vide said proceedings and the same remains unpaid.

7. Under such circumstances, the first respondent has issued a 'communication dated 22.7.2019 bearing Ref.No.Rc.A3/102/ 2019' (hereinafter 'impugned attachment order' for brevity) and this impugned attachment order has been issued by the first respondent to the second respondent, attaching the bank account of writ petitioner which as mentioned supra, is a Company and a juristic person.

8. Learned counsel for writ petitioner submits that bank account of the writ petitioner Company, which is a juristic person and a separate entity, cannot be attached for the penalty which is liable to be paid by one of its Directors, who is a natural person.

9. Learned Revenue Counsel, who has accepted notice on behalf of first respondent, draws the attention of this Court to Section 45(1)(a) of TNVAT Act and submits that the impugned attachment order is tenable as the first respondent can issue such an order to any person from whom money is due or may become due to the dealer. Learned counsel points out that the aforesaid natural person is a dealer under TNVAT Act and that is not the case with regard to writ petitioner, which is a juristic person and this Court is informed that the writ petitioner is Headquartered in Gujarat.

10. It is not in dispute that the writ petitioner Company is constituted by two Directors and they are father and son duo. This Court is informed that the deponent of affidavit filed in support of the instant writ petition Mohan Prasath J Sengunthar is the son of aforesaid G.Jayabal.

11. In the light of one submission made by the learned counsel for writ petitioner, the entire matter now turns on an extremely narrow compass. It was submitted by the learned counsel that the aforesaid order dated 15.2.2017 i.e., revised assessment order made by the first respondent under which the aforesaid G.Jayabal is liable to pay little over Rs.11.05 lakhs penalty is being assailed in a manner known to law and that the same will be done within eight weeks from today.

12. It was also submitted by the learned counsel for writ petitioner that the entire business/trading activities of the writ petitioner has been paralysed owing to the impugned attachment order.

13. This Court is of the considered view that in the light of the undisputed position as it unfurls in the hearing today, without expressing any view on the merits of the matter, writ petition can be disposed of by passing an order

whereby the assessee gets a breather and the interest of Revenue is also protected. In this view of the matter, the following order is passed:

(a) It is not in dispute that with regard to penalty liability of little over Rs.11.05 lakhs of G.Jayabal i.e., Rs.11,05,037/- (Rupees Eleven Lakhs Five Thousand and Thirtyseven only) to be precise, a sum of Rs.1,51,038/- (Rupees One Lakh Fiftyone Thousand and Thirtyeight only) has already been debited from the bank account of the writ petitioner Company and the same has been paid out to the Department. In addition to this, the writ petitioner Company will now pay 25% of the penalty amount of Rs.11,05,037/- (Rupees Eleven Lakhs Five Thousand and Thirtyseven only) to the first respondent.

(b) For the balance after giving credit to the aforesaid Rs.1,51,038/- (Rupees One Lakh Fiftyone Thousand and Thirtyeight only) and 25%, a personal bond shall be provided by the deponent of the aforesaid affidavit filed in support of the instant writ petition.

(c) On the aforesaid payment being made and a bond being furnished in appropriate format as required by the Department, the impugned attachment order will stand raised.

(d) If aforesaid 15.2.2017 order (said proceedings) is not assailed by the dealer therein, within eight weeks from today (as alluded to supra) the impugned attachment order will stand automatically revived without any reference to this Court.

14. Writ petition is disposed of with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

Svn

To
1.Assistant Commissioner (CT)(FAC),
Cuddalore Town Assessment Circle,
Cuddalore.

2.The Branch Manager,
ICICI Bank Limited,
Poonam Plaza,
Ground Floor,
Rambaug Plaza,
Mani Nagar,
Ahmedabad - 380 008,
Gujarat.

+1 CC to Mr. Hari Radhakrishnan, Advocate sr 68025.

WP No.23293 of 2019

GP(CO)
SP(13/09/2019)